

## Article

# Diplomatic and Legal Challenges to the Historic Legacies of Japan's Territorial Disputes<sup>1</sup>

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## Abstract

Territorial disputes are multi-faceted products of long-standing state-state relationships involving the historic and cultural legacies of the parties concerned. Japan faces the following long-standing territorial disputes with its neighbouring states: (1) the Northern Territories dispute with Russia; (2) the Takeshima/Dokdo dispute with the Republic of Korea (or South Korea); and (3) the Senkaku/Diaoyudao/Diaoyutai Islands dispute with the People's Republic of China (or China) and possibly the Republic of China (or Taiwan). Essentially, each case has its origin sometime before the Second World War, and the difficulties in settling these disputes arise from the fact that the post-war situation as well as the Cold War has made their settlement more complicated with regard to the interpretation and application of the relevant rules of international law. This article aims to propose some alternatives for future approaches to these issues by referencing successful precedence in this field and practical challenges in the application and interpretation of the legal rules of diplomacy in international society.

**Key words:** Japan's territorial disputes, Northern Territories, Takeshima / Dokdo, Senkaku Islands / Diaoyudao / Diaoyutai, boundaries, maritime space

## Introduction

Territory is one of the most important elements that make a sovereign state. Territorial disputes are multi-faceted products of long-standing state-state relationships involving the historic and cultural legacies of the parties concerned.<sup>3</sup> Territorial disputes may, in general, attract the attention of not only the parties concerned but also third states, because the latter can learn from the former's responses to the questions involved. When a territorial dispute is successfully settled, the solution is of great value as good precedence. One cannot always expect a solution of the all-or-nothing

style. In some cases, the solution may partially satisfy both parties. Additionally, neither party may be satisfied even though a legally sound answer to the problem is provided in the form of an arbitral award<sup>4</sup> or judicial decision.

As the attached map shows, Japan has three territorial disputes with neighbouring states: (1) over the Northern Territories with Russia; (2) over Takeshima/Dokdo with the Republic of Korea (or South Korea); and (3) over the Senkaku/Diaoyudao/Diaoyutai Islands with the People's Republic of China (and, possibly, with the Republic of China (or Taiwan)).<sup>5</sup> Essentially,



Source: Japanese Ministry of Foreign Affairs

each case has its origin sometime before the Second World War, and the difficulties in settling these disputes arise from the fact that the post-war situation as well as the Cold War has made their settlement more complicated with regard to the interpretation and application of the relevant rules of international law. Japan's foreign policy should be pursued on the basis of this understanding.<sup>6</sup>

The location of these islands denotes the political, economic, historic, geopolitical, and cultural elements concerning the bilateral relations between the parties concerned. However, these elements tend to obstruct peaceful and smooth communication between the parties. The matter of territory naturally stirs up nationalism among the people due to their emotional and subjective bonds with the land. Diplomacy and foreign policy are supposed to function in accordance with international law. It is often neglected that, under these circumstances, international law will not necessarily be the one and only panacea for a territorial dispute.

The aim of this article is to reconsider the often neglected points regarding the settlement of Japan's territorial disputes with its neighbouring states, and aims to provide a fresh look at the territorial issues that may often misguide and blind the parties concerned. The article does not intend to present any practical method to settle these disputes. Its main argument is to show the following. First, one cannot perfectly settle territorial disputes only through a diplomatic or legal means. It is rather rare in practice to win one-sidedly in diplomacy. It may even be unfavourable to demand 100% of a goal in the near future, and it may be wiser to modestly stop short of more than half of the final goal.<sup>7</sup> Second, legal principles and rules may play limited roles in the settlement of disputes in international politics. Third, statesmen, diplomats and practitioners need courage and imagination to embark on a new phase in diplomatic negotiations. This article will supply a different point of view concerning the settlement of territorial disputes and the role that law has to play in this field.

## I. Japan's territorial disputes: The Three Cases

As the attached table shows (see [Table]), these three disputes are quite different from

each other in their backgrounds, the nature of the dispute, geographical elements, the political and economic connotations, and so on. But, at the same time, these disputes seem to have some common features such as physical and geopolitical conditions, and economic utility. The islands are located in a geopolitically sensitive area between these parties.<sup>8</sup> They may also have an economic potential upon the condition that they are properly developed. When the parties agree on these considerations, it may positively accelerate the future of the settlement of the disputes.

	the Northern Territory 北方領土	Takeshima/Dokdo 竹島／独島	Senkaku/Diaoyudao 尖閣諸島／釣魚台郡島
Parties	Japan v. <b>Russia</b> (Former Soviet Union)	Japan v. <b>Republic of Korea</b> (cf. DPRK (North Korea))	Japan v. <b>China</b> (cf. Taiwan)
Since (critical date?)	the end of WWII (SU's occupation)	1952 (by the Syngman Rhee Line)	1971
objects	4 islands (5003km <sup>2</sup> (100%)): <b>Etorofu</b> (3168km <sup>2</sup> (63%)), <b>Kunashiri</b> (1490km <sup>2</sup> (30%)), <b>Shikotan</b> (251km <sup>2</sup> (5%)) & <b>Habomai</b> (95km <sup>2</sup> (2%))	a set of islands called Takeshima/ Dokdo (two main islands(0.23km <sup>2</sup> ) and other islets)	a set of islands called Senakaku/ Diaoyudao (6.3 km <sup>2</sup> ) (Uotsurijima (3.72km <sup>2</sup> ))
habitability	mostly habitable <b>Etorofu</b> , <b>Kunashiri</b> , <b>Shikotan</b> & <b>Habomai</b>	uninhabited (cf. some Koreans?)	uninhabited
occupant	Russia	ROK	Japan
referral to the ICJ	J : Yes R: No	J: Yes ROK: No	J: No China: (probably) No
Peace treaty	Not yet concluded (cf. 1956 <b>Joint Declaration</b> )	N.A. (cf. 1965 <b>Basic Relations Treaty</b> )	1978 <b>Peace &amp; Friendship Treaty</b>
Note (issues)	Fishery consultation Illegal fishing and arrest	History recognition The naming of the Sea of Japan	History recognition, gas development, demarcation of the EEZ & Continental Shelf

Source: MOFA of Japan, etc.

## 1. The Northern Territories<sup>9</sup>

The Northern Territories are a set of four islands (Etorofu, Kunashiri, Shikotan, and Habomai). According to the Japanese government, they have been under 'illegal' occupation by Russia (and the former Soviet Union) since the end of the Second World War. Japan wishes to solve this territorial issue since the conclusion of a peace treaty to establish a real strategic partnership will be of great interest to both countries. Even though its detailed legal argument is not necessarily clear, Russia's position<sup>10</sup> may be summarized as follows: (1) All of the Kuril Islands, including the four islands in question, became part of Russia as a result of the Second World War; (2) Russia, or its predecessor state, the former Soviet Union, has unquestionable territorial sovereignty over the Islands under relevant international agreements. For Russia, thus, it

is Japan which must accept the consequences of the Second World War.

Japan's position is mostly based on the following arguments: (1) The four islands in question are inherent territories of Japan; (2) these islands have been illegally occupied by the former Soviet Union and Russia since the end of the Second World War; and (3) the international agreements, on which Russia relies, are not applicable to this territorial dispute.<sup>11</sup>

Regarding its legal argument, Japan seeks to base its claim on the 1941 Atlantic Charter, which committed the US and the UK, later with accession by the former Soviet Union, to the principle of 'non-territorial expansion by war'. Then, for Japan, the four islands, which are inherently part of its territory, are not included in the territories that it was stripped of, under the 1943 Cairo Declaration,<sup>12</sup> in contrast to those Japan had seized 'by violence and greed'. The 1945 Yalta Agreement,<sup>13</sup> between American, British and Soviet leaders, stipulates that '[t]he Kurile Islands shall be handed over to the Soviet Union', but Japan maintains that its legal nature does not justify Russia's claim due to its inapplicability to a third state of the agreement.<sup>14</sup>

In Japan's opinion, the Potsdam Declaration,<sup>15</sup> which reconfirmed the Cairo Declaration, does not apply to the four islands either, since they are not part of the territories that Japan was forced to renounce. Even the partial nature of peace in the 1951 San Francisco Peace Treaty made the situation more complicated, because, under the Peace Treaty, of which Russia is not a state party,<sup>16</sup> the range of the Kurile Islands, all the titles, rights, and claims to which were renounced by Japan,<sup>17</sup> has remained a very controversial issue to both countries. In short, the origin of the dispute derives both from the obscurity of the disposition of the post-war settlement and from the unreliable attitude of the drafters and authors of each arrangement, who left matters in the hands of others, perhaps due to the lack of time in the post-war confusion period and an optimistic perspective.

It is also unfortunate that, historically, both sides have only harboured animosity towards one another, owing to the sour and negative impressions of one another that has been prevalent for nearly a century. Russia, who used to be one of the largest imperial powers, does not like to remember the defeat of the Russo-Japanese War of 1904-05, or the pains it felt against Japan's troops sent to Siberia during its weak and messy domestic period after the Russian revolution. Japan also has a bitter memory of the Triple Intervention (of Russia, France, and Germany) after the 1895 Treaty of Shimonoseki, and the treacherous Soviet participation in the Pacific War despite the existence of the 1941 Neutrality Pact between the two countries.

Moreover, one of the most confusing issues concerning the territorial dispute is the range of the Kurile Islands. The geographical and legal scope of these disputed islands has been controversial due to the awkward and twisted history of the position of both parties. Did Japan renounce all the islands in this range? It is not very well known, despite the debate session at the Diet of Japan after the Second World War, that Etorofu and Kunashiri were, at first, regarded as being out of the scope of the 'inherent territory of Japan', and that they were purported to

constitute part of the Kurile Islands that Japan had renounced after the San Francisco Peace Treaty.

It has been pointed out, moreover, that during the negotiation of the conclusion of a Joint Declaration in the mid-1950s, Japan, whose domestic political environment was considerably unstable at the time, switched its policy to the reversion of the four islands from the original modest return of the two. This was done under the threat of the then Secretary of State Allen Welsh Dulles, who wanted to make the most of the Cold War situation in the Far East. This story, which was disclosed in detail in Shunichi Matsumoto's *Mosukuwa ni kakeru niji* (*Rainbow over Moscow*),<sup>18</sup> has been, curiously, denied as 'a mistake or a misunderstanding' by the Japanese Ministry of Foreign Affairs, who insists on its 'consistent' grounds toward the return of all four islands in its entirety.

However, the 1956 Joint Declaration only mentions the possibility to 'hand over' the two minor islands, Shikotan and Habomai, after the conclusion of a peace treaty, without referring to the other two.<sup>19</sup> For the last 60 years, little progress has been made concerning this territorial issue, which has been clinging to the dialogue between Japan and Russia. Even after the end of the Cold War, summits between the two countries have borne very little fruit, with some exceptions: first, a group consisting of a lawmaker, a high bureaucrat, and their colleagues developed a remarkably friendly atmosphere in the disputed area which unfortunately led to some scandals; and second, the aforementioned European Parliament resolution, which, as far as this dispute is concerned, clearly supports Japan's position.<sup>20</sup>

Thanks to the new initiative by the Abe administration in cooperation with the Putin presidency, the recent trade and economic relationship has started to grow gradually since the end of 2016, and the energy project between the two is currently regarded as hopeful. Many approaches have been advocated by the leaders of both countries such as a 'new, creative, non-stereotype approach' (Taro Aso, quoting the then President Dmitry Medvedev), '*hikiwake* (or draw)' (President Vladimir Putin), and 'a mutually acceptable solution' (Medvedev and Putin). In other words, one may say that there will never be a one-sided solution, no matter how desperately Japan wishes to insist on a solution 'on the basis of historical and legal facts' on the one hand, and 'on the principles of law and justice' on the other. Russia will not agree to hand over the islands in question because there is a possibility that the United State will eventually take them over from Japan in order to install its military base and facilities aiming at maintaining security in the region. The recent proposal of introducing some joint economic activities (projects)<sup>21</sup> under a 'special legal regime' established by the two countries is still under consideration for the future.

Are the facts and legal rules applied in this dispute clear and without question to everybody? Does law give both sides a clear indication of the attribution of sovereignty in this issue? Does this type of negotiation led by an adversarial attitude produce 'a mutually acceptable solution' in the long term? It seems that the sort of 'zero-sum' game nature of the territorial dispute in accordance with relevant laws will limit the future of conversation in international society where there is no

supra national existence that can effectively persuade the parties concerned, and where there is no legal obligation to bring a dispute to a court or a tribunal without both parties' consent.

## 2. Takeshima/Dokdo Dispute<sup>22</sup>

The next is the singular situation of Takeshima/Dokdo.<sup>23</sup> In the light of Article 121 (Régime of islands) of the United Nations Convention on the Law of the Sea (UNCLOS), its geographical features, such as the mountainous and barren surface of the island, do not seem to support the idea that human beings can permanently inhabit it.<sup>24</sup> Therefore, this paper does not intend to fully deal with the legal status of Takeshima itself, that is, whether it is an island under UNCLOS or not.

The dispute attracted the attention of the Japanese people when the Republic of Korea (ROK) suddenly incorporated the island into its own territory in 1952 by unilaterally setting the so-called Syngman Rhee Line<sup>25</sup> after the conclusion of the San Francisco Peace Treaty, to which Korea had not been invited to accede. The ROK has effectively occupied the island since 1954, and has tried hard to enhance its claim over the territory, for instance by installing permanent facilities and security personnel, issuing stamps with a map and picture of the island, and even permitting a couple to permanently reside there.

While the ROK has been intensively solidifying its claim by these kinds of *fait accompli*, Japan denies all of these conducts as valid legal facts to support the Korean claim. Today the economic value of the island may be increasing because of the increasing potential for the establishment of an exclusive economic zone (EEZ) in the relevant maritime area around the island despite the fact that these two countries have so far avoided any direct clash by concluding the 1999 bilateral agreement on fisheries.<sup>26</sup>

Korea's basic position is that since 'Dokdo is an integral part of Korean territory, historically, geographically and under international law', '[n]o territorial dispute exists'.<sup>27</sup> Other grounds can be summarised as follows: (1) Korea originally discovered the island, and has administered it and maintained a presence on it; (2) Japan's illegal occupation of the Korean Peninsula through its colonial rule does not produce any effective legal title over the island.

Japan's position is essentially the following: (1) Takeshima is clearly an inherent territory of Japan in the light of historical facts and under international law; (2) Korea, who is illegally occupying the island in question, has not produced any effective evidence to support its own claims.<sup>28</sup>

Be that as it may, who can decide the credibility and validity of the maps offered by both sides? Some of the maps date back more than a few centuries. At least, the ROK, denying the validity of all the evidence that is produced by Japan, has gone so far as to maintain that there is no territorial dispute over the island between the two countries because it has been continuously and legally occupying the territory as an inherent part of its own. Japan's position is criticised since some writers maintain that the 1905 incorporation by Japan of Takeshima into its own territory

took place through the process of Japan's colonization of Korea by way of unequal and illegal treaties. This is why the dispute is very often connected to the problem of history recognition (including, of late, the comfort women issue) in Korea and reminds the Korean people of the unbearable past of the pre-WWII period.

Neither side ever concedes, maintaining that no claim is valid or just. Questions over who discovered the island first and when the occupation started have effectively found no common answer. Accordingly, it seems to be extremely difficult to settle the dispute through bilateral negotiation. Japan's proposals of 1954 and 2012, respectively, to jointly file this case at the International Court of Justice (ICJ) have not been successful in convincing the ROK to join them in their proposal.<sup>29</sup>

In this dispute, however, both governments seem to be making an effort not to fuel the peoples on both sides, although there have occasionally been some minor conflicts over the island, such as the abrupt visit to the island by the then President Lee Myung-bak in August 2012.<sup>30</sup> Otherwise, however, they tend to be realistic and quite business-like when they have to solve practical matters such as fishery problems in and around the maritime zones of the island. When Japan normalised diplomatic relations with the ROK through the Basic Treaty of 1965, both states also concluded the Fishery Agreement to govern fishery matters without settling the Takeshima dispute. However, the new Fishery Agreement of 1999, which demarcated the lines of the EEZ of both countries in the Sea of Japan in accordance with the median line method, sets the temporary maritime zone, avoiding delimiting the EEZ of the maritime area around Takeshima, so that both sides may exercise their respective enforcement jurisdiction in case of illegal fishing. It is noteworthy that, at least with respect to the conclusion of the 1999 fishery treaty, they agreed upon shelving the question of the attribution of sovereignty over the island, and consented that they somehow jointly rule the EEZ regime in the maritime area of the disputed island.

In addition, neither of the two parties doubts the legal status of Takeshima as an 'island' but not as a rock 'which cannot sustain human habitation or economic life of their own' under Article 121(3) of UNCLOS: Takeshima cannot be a rock for either of them. Otherwise, they would not be allowed under UNCLOS to claim the EEZ or continental shelf. Only an island may serve as the baseline both for the territorial sea and the contiguous zone, and for the EEZ and the continental shelf under Article 121(1) of UNCLOS.

However, a question arises as to Takeshima's practical use apart from the symbolical geographic indicator to occupy a certain maritime area for jurisdictional control, taking into consideration factors such as size and habitability. It is in a sense understandable that an unofficial proposal was once made by both sides that the island is so useless that it should be exploded for the sake of common peace. So far, no concrete and tangible data is in favour of the very hopeful possibility of the development of mineral resources in the maritime zone around the island. The major issue may be the exercise of jurisdiction of each country in the relevant maritime area,

particularly in case of fishery, maritime safety, and security. In this sense, there seems to be a limited number of urgent matters to be resolved between the two countries only if they mutually agree upon the solution of shelving the territorial problem for the sake of the practical issues to be solved.

### **3. The Senkaku/Diaoyudao/Diaoyutai Islands Dispute<sup>31</sup>**

The Senkaku/Diaoyudao Islands,<sup>32</sup> which are composed of Uotsurijima (3.82km<sup>2</sup>) and some other islets, did not catch the spotlight until the late 1960s, when a scientific report made under a UN affiliated organ's initiative revealed the potential existence of a reservoir of non-renewable resources under the continental shelf below the maritime area around the islands. Both the People's Republic of China and the Republic of China (Taiwan)<sup>33</sup> made a claim for the islands, after the US expressed in 1971 its intention to return the Okinawa Islands to Japan.<sup>34</sup>

Regarding the Senkaku Islands issue, the Japanese Government's position<sup>35</sup> is simple, compared with the other two territories considered above. When referencing to the official website of the Ministry of Foreign Affairs (MOFA), the islands are 'clearly an inherent part of' its territory, there exists 'no issue of territorial sovereignty to be resolved'.<sup>36</sup> This seems to be mainly because, in contrast to the other two territorial disputes, Japan has effectively occupied the islands since the reversion of Okinawa to Japan in the early 1970s (that is, the 1971 conclusion of the Agreement on the Reversion of the Okinawa and the 1972 implementation of its reversion).

China's basic position is that 'Diaoyu islands belong to China',<sup>37</sup> and is based on history and international law (the 1943 Cairo Declaration and the 1945 Potsdam Proclamation, among others).<sup>38</sup> China's claim may be summarised as follows: (1) China has an earlier relation with the islands (since the Ming Dynasty (1368-1644)); (2) the islands were ceded with Taiwan to Japan under an unequal treaty in 1895, and were returned to China along with Taiwan after the Second World War; and (3) just before the reversion by the US of the Okinawa Islands to Japan, China protested, claiming its sovereignty over the islands.

Japan, for its part, maintains as follows: (1) Japan occupied *terra nullius* in 1895, and after a thorough survey of the islands, incorporated it into its own territory, before Taiwan was ceded by China under the 1895 Shimonoseki Treaty; and (2) the islands are not included in the territory that Japan renounced under Article II of the San Francisco Peace Treaty.

As is also the case with the other two disputes considered above, the main legal issues are the following: (1) who originally discovered the islands?; (2) since when have the islands been under effective occupation and by which authorities?; (3) the questions over the validity of the incorporation of the islands by Japan in 1895 under the cover of their victor in the Sino-Japanese War; and (4) the question concerning the validity of the disposition of the islands after WWII.

In this dispute, Japan's position may appear to be stronger as it 'effectively' occupies the territories. But, occasionally, it is reported that the 'trespassing' in the territorial sea, frequently



by Chinese and Taiwanese vessels, official or private, takes place in and around the concerned maritime area. Moreover, this territorial issue is quite often connected to the maritime dispute concerning the development of gas fields lying across the possible border of the continental shelf on each side.

And, with regards to the delimitation of the continental shelf and the EEZ in the East China Sea, China seems to have a policy of ambiguity. And it is often said that China is of the opinion that the natural prolongation of its land mass continuously extends beneath the sea beyond the median line between the coasts of both sides, which contended by Japan, and even reaches the Okinawa Trough, which is located on the Pacific Ocean side. China, as a rising economic power in the world, does not only hide its energy resource incentives in the maritime dispute, but also shows off its military presence and expansion in the region in order to challenge the current legal order established after the Second World War.

China has unilaterally started the exploration and development of gas fields in the area, but this has been seen as hostile and unfriendly conduct, set against aforementioned background. A partial and tentative agreement made in 2008 between the two countries concerning a future project of joint development in the area has been adrift, owing to some unexpected events such as China's abrupt drilling in one of the agreed areas. The tentative cease-fire by way of an agreement concerning the future joint project has turned out to be a 'castle in the air', instead reviving the tension between the two sides. While China's high-ranking officials have expressed their wishes to solve the territorial question of the islands through talks, the Japanese side has repeated their very firm original position, stating that 'there was no room for consultation on the territorial question of the Senkaku Islands since they are an inherent part of Japan's territory'.

Probably the worst tension was caused in 2012 by a series of incidents triggered by a statement given by the then Tokyo Mayor, Shintaro Ishihara, to the effect that the metropolitan government of Tokyo is planning to purchase some of the islets which had been under the ownership of a private Japanese citizen. The central government of Japan instead pre-emptively 'nationalized' them by changing the ownership from that of private to that of public. China, for its part, regards the unilateral nationalization by Japan of the islands in question as an act of state, and a fundamental change to the status quo by breaching the tacit agreement of shelving the dispute, whose existence the Japanese government utterly denies.<sup>39</sup>

A series of conflicts concerning the territory in question may make the Japanese people feel that Japan should show its own resolute stance towards the arrogant and unreasonable attitudes of the other parties, because Japan has legally justifiable grounds. But is it really so? Who is responsible for the task of fact-finding, for example? Do legally justifiable grounds always lead to the settlement of disputes? Unfortunately, international law does not necessarily prescribe so. It is ironic that history shows some contradictory cases, as will be discussed below. In fact, an adversarial and antagonistic atmosphere in a bilateral talk, mainly based on legal claims, only

produces a very limited scope of achievements. Legal arguments of this kind without a reliable fact-finding process tend to be too barren and futile to bear the fruit of the peaceful settlement of a dispute. Beating the opponent hollow by means of legal principles is not a short cut to reaching a ‘mutually acceptable solution’. Where there is no third party with an impartial and objective character, the battery of legal arguments will *per se* produce no fruit.

One may often be tempted to propose to have recourse to a judicial and/or arbitral court to obtain a final judgment/award. Even though this idea may theoretically be possible under consent from the concerned parties, optimistic outcomes are not always guaranteed. There is not as much predictability in judicial or arbitral settlements as is often hoped for. There are ample cases that attest to the risk and danger of having major recourse to law and legal principles in the settlement of territorial disputes.

## **II. Some Lessons from Successful Precedence**

Owing to the space constraint of this article, it will be of interest to pick only a few relevant cases from which we can learn good lessons to use in other approaches to embark on a new phase of bilateral relations. It is intriguing to know from these cases that some of them, where the parties resorted too heavily to a judicial or arbitral settlement, are probably failures, and that the others that may teach us something, are those which contain a non-judicial or more political solution to the disputes.

### **1. The Beagle Channel Case<sup>40</sup>**

First, in the Beagle Channel dispute between Argentina and Chile, the issue was the demarcation of the border lines delimiting the land and maritime zones over which both states claim sovereignty. In fact, the possession of the three major islands in the disputed maritime area off and around the coast of the most southerly tip of the Latin American Continent was also the main issue. After long conflicts between the two since 1904, they finally signed an agreement in 1971 to submit this issue to a legally binding arbitration without appeal under the auspices of Queen Elizabeth II of the United Kingdom. The arbitral tribunal was composed of five distinguished members of the ICJ, who were jointly chosen by both parties. The arbitral award was unanimously given in favour of Chile in 1977, and its contents have been highly appraised by many jurists in this field. Dissatisfied with the contents of the award, however, Argentina rejected the ruling and even attempted to use force against Chile, challenging the ruling.

In 1979, both states agreed upon papal mediation under the Act of Montevideo after direct negotiations, but Argentina rejected the Pope’s proposal the following year. After the national plebiscite of 1984, where more than 80% of the Argentine electorate voted in favour of the Vatican’s proposal while around 16% was against this idea, both states signed a protocol of

agreement to a treaty at the Vatican City, conceding the disputed islands to Chile but granting more maritime rights to Argentina.

Some writers suggest that this dispute was also connected to the Falklands Islands War. It may be said that, in this case, the territorial dispute was solved not as a result of legal justice, but rather of political compromise (or a religious miracle). One may even assume that this could only have been possible in Catholic countries due to their common cultural and religious backgrounds. There is no clear indication of how far religion played a role in this dispute, but it is certain that the rigid application and interpretation of the law would not alone have settled the dispute definitively.

## **2. The Cameroon/Nigeria Dispute<sup>41</sup>**

The second example is the land and maritime boundary dispute between Cameroon and Nigeria. This territorial dispute is focused on the attribution of sovereignty over the Peninsula of Bakassi, which lies in the Gulf of Guinea. After long disputes, Cameroon, who based itself on the mutual acceptance of the compulsory jurisdiction of the ICJ, unilaterally filed the proceedings against Nigeria at the ICJ in 1994.

Eight years later, the ICJ rendered a judgment in favour of Cameroon, instructing Nigeria to transfer the occupying Peninsula of Bakassi to Cameroon, who, according to this judgement, will in turn be obliged to protect the rights of a substantial Nigerian population. The 2002 judgment, however, invited strong public opinion against it in Nigeria, and its government was under pressure to revise it. The danger of armed conflicts and riots became very high. Eventually, in 2006, under the good offices and mediation by the then UN Secretary General Kofi Annan, both states agreed upon the implementation of the conditions prescribed in the ICJ judgment. Although the transfer of the territory in question has not yet been completed, the settlement could not have taken place without the then Secretary General's contribution, backed up by the UN security mechanism as a political enforcement system.

## **3. The 1991 Sino-Russian Border Agreement<sup>42</sup>**

Thirdly, the 1991 Sino-Russian Border Agreement also represents a successful settlement of a territorial dispute. This long-standing border dispute can also be seen as the product of political compromise between China and Russia rather than one of legal principles. After long border disputes, both states signed an agreement to settle all the related border disputes that had been a legacy of various treaties between the former governments of the two countries. The disputed areas stretch as long as 4,200km of the border between the two states, and they include rivers, islands, and sandbars. After the conclusion of the agreement and its implementation, by 2004, all the related disputes have been settled step by step.

The point of this settlement is that both sides did not seek a 'zero-sum game' approach, but

rather a ‘win-win’ approach, i.e. the ‘fifty-fifty’ approach. In short, both agreed upon the condition that they divide the disputed land in the spirit of a ‘fifty-fifty’ approach; while one side concedes one item in terms of a land territory, the other admits the opponent’s rights over the other item such as the attribution of islands.<sup>43</sup> This approach may contain a sense of reaching an equitable, if not equal, solution for both parties. Instead of rigorously using the legal rule of *Thalweg* in demarcating the river border, they politically negotiated the deal by way of the technical operation of the number and size of the concerned islands. The total balance was struck as a consequence of the negotiations, so that both sides could share the feeling of a ‘win-win’ solution through political compromise, which may have been in a common interest in the contemporary international political environment.

Moreover, a new concept of the ‘joint use’ of some islands in the river was also introduced to mitigate the idea that one single country should have full sovereignty over an island despite its historic background. These operations of implementing territorial allocation are all conducted for the purpose of reaching a ‘mutually acceptable solution’. In this case, political compromise can be said to have played a much more significant role than legal principles.

#### **4. Some other cases of interest**

Those cases discussed above are all concerned with the territorial disputes between two parties. Besides these kinds of bilateral disputes, there are some cases where more than two states are involved as the concerned parties of a territorial dispute. It may be noteworthy to briefly mention the utility of a mode of settlement of multilateral territorial disputes. The Antarctic Treaty of 1959<sup>44</sup> is a good example of ‘freezing’ the territorial disputes in Antarctica, since its fundamental legal principles, including shelving the territorial problem and demilitarisation and denuclearisation of the continent, provided the chance for all twelve original signatory parties (i.e. seven claimant states, two potential claimant states, and three non-claimant states) to admit each party’s legal position. In other words, this is an agreement to disagree to maintain the Antarctic for peaceful purposes. Unexpectedly, this miraculous settlement of a region has not come apart so far, but has nowadays rather developed into a more sophisticated and organized international ‘objective régime’ to govern almost every aspect of the continent.

Another multilateral settlement is the Spitsbergen Treaty of 1920,<sup>45</sup> which accorded full sovereignty over the archipelago to Norway, while it recognized the right to settle citizens of any of the signatory states.<sup>46</sup> Under this treaty, the islands were partially demilitarised and equal rights to engage in industrial activities on the islands are conferred upon all signatory states. Even though there may currently be limited use with respect to this classic-style treaty, it had nine original signatory parties and has now grown to include more than forty parties.

## Conclusion

None of the successful examples considered above may be extremely convincing since they are completely different from Japan's territorial disputes in many ways. The author of this article might be criticised for these choices and preferences. Obviously, in the case of Japan, the religious factor will not work at all, let alone will a person such as the Pope be a very suitable authoritative mediator, as was the case with the Beagle Channel dispute. There will practically be no chance to go to the ICJ with Russia or the ROK, who would not, in principle, give consent to the proposal. As for the case of the boundary dispute between China and Russia, this solution may not apply to Japan's situation because the object of the dispute is completely different in each case: the former is principally concerned with the border of the river and the demarcation of land and maritime territories, while the latter is mainly related to the attribution of territorial sovereignty over the islands.

It should be emphasised, however, that there are some common features in these cases. First, there may be limited room for legal principles and rules to work in the settlement of a territorial dispute as a whole. Second, no party would generally accept the other side's contention in negotiations. Conversations at a bilateral talk tend to be more or less adversarial even though this may be, in most cases, a starting point. The settlement of territorial disputes does not always guarantee the implementation by the parties of the judgement of a judicial court or of the award of an arbitral tribunal. Third, the settlement of a territorial dispute does not necessarily mean that the attribution of sovereignty over a territory is decided through negotiation or another mechanism of the dispute settlement, or that the demarcation of boundaries is achieved. These are admirable aspects of the resolution process. Laws cannot effectively explain political compromise, but international law does not necessarily exclude the applicability of non-legal factors such as *ex aequo et bono*, if necessary. A number of variations of solutions such as joint ownership and shelving the dispute for a certain period of time may also be considered as a means to reach a 'mutually acceptable solution', so far as the parties agree.

Japan's territorial disputes, in principle, contain bilateral questions that need to be solved through bilateral talks. It is certainly not possible to settle all the territorial questions at the same time in a multilateral frame work. When it comes to a territorial dispute, one cannot but become a patriot or a jingoist. Nobody wants to give an inch to anybody. If you gave a finger, then your arm would be demanded or even taken. No proposal would be accepted if it were only based on legal principles and rules. The facts and data that one side relies upon can be easily challenged, and would never be completely accepted, by the other.<sup>47</sup>

These kinds of deadlock situations would easily lead to a vicious circle fuelled by parochial and short-sighted policies. One would enter the tunnel without an end. Under the circumstances where a majority of the people of a country cannot calm down and think twice about the future,

and where those people are forced to believe in a myth or an illusion created and emerged through mass media and misinformation, it is not easy to reach a practical solution. The significance of a solution under law should not be exaggerated. One typical failed example is the South China Sea arbitration (The Philippines/China).<sup>48</sup>

The stress should not be on the omnipotence or omnipotentiality of the law in settling a territorial dispute on the basis of its rigorous interpretation and application, but its practical limits in the settlement, particularly when more flexible approaches, including Machiavellian intelligence and Sun-tzian wisdom, will normally work. Each case is geographically and historically unique. A case-by-case approach may not be excluded, since there is no unified rule to settle a territorial dispute. Even an ‘Asian way’ may also be applied for good reasons. It may be said that, with respect to the territorial disputes in question, there is limited room for the relevant rules of international law to function, since most of them are principally of European origin.<sup>49</sup>

Then a question arises as to whether one should be happy to stick to this stalemate situation forever. This is a matter of choice. The longer it takes to settle the dispute, the more difficult it becomes. Accomplished facts will accumulate and may easily turn into reality. The future must face the consequences of the past’s legacy. Therefore, timing is also key. Diplomacy and law go hand in hand in negotiations, and will produce something meaningful only if both find common interest in jointly working for their mutual benefit.

## Endnotes

- 1 The basic idea of this article derives from an oral presentation given at the SciencesPo à Paris on 26 February 2009. The author would like to take this opportunity to thank the participants for their valuable comments on his presentation.
- 2 See also the author’s book review of *Peace in Northeast Asia: Resolving Japan’s Territorial and Maritime Disputes with China, Korea and the Russian Federation* edited by Thomas J. Schoenbaum, Edward Elgar, 2008, in *Waseda Global Forum*, No. 6, 2009, pp. 361-367, 366.
- 3 See Kimie Hara, (Ed.), *The San Francisco System and Its Legacies: Continuation, Transformation and Historical Reconciliation in the Asia-Pacific*, Routledge, 2015.
- 4 See, for example, the Arbitral Award of 1977 given in the *Beagle Channel Case* (Chile/Argentina).
- 5 See Yuuichi Takano, *Nihon no Ryodo* [Japan’s Territory], Tokyo University Press, 1962/1970; Kentaro Serita, *Nihon no Ryodo* [Japan’s Territory], Chuokoron, 2002; Jon M. Van Dyke, ‘Disputes over Islands and Maritime Boundaries in East Asia’, in Seoung-Yong Hong & Jon M. Van Dyke, (Eds.), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff Publishers, 2009, pp. 39-75; Taisaku Ikeshima, ‘Recent Developments in Maritime Delimitation: Any Implication for Territorial and Maritime Boundary Disputes in East Asia’, *Transcommunication*, Vol. 4-1, 2017, pp. 77-89.
- 6 For Japan’s foreign policy and these territorial issues, see Kazuhiko Togo, *Japan’s Foreign Policy 1945-2009: The Quest for a Proactive Policy*, Brill, 2010.
- 7 For the significance of a considerate and moderate sense in diplomacy, see Togo, *supra* n. 6, pp. 431-432.
- 8 For a geopolitical analysis of the territorial disputes, see Robert D. Kaplan, *The Revenge of Geography*:

*What the Map Tells Us about Coming Conflicts and the Battle against Fate*, Random House, 2012, pp. 170-174, 214-215, 219-226.

- 9 See Schoenbaum (Ed.), *supra* n. 2, pp. 117-127; Kimie Hara & Geoffrey Jukes, (Eds.), *Northern Territories, Asia-Pacific Regional Conflicts and the Åland Experience: Unitying the Kurillian Knot*, Routledge, 2009; Konstantin Sarkisov, 'Russia and Japan: the Algorithm of the Kuriles/Northern Territories Problem', in Hara, *supra* n. 3, pp. 37-54; Yakov Zinberg 'Kuril Islands', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1308?rskey=zc3LNV&result=5&prd=EPIL>> (accessed 29 June 2017).
- 10 The official position of Russia is not necessarily clarified. See Vlad M. Kaczynski, 'The Kuril Islands Dispute Between Russia and Japan: Perspectives of Three Oceans Powers', *Russian Analytical Digest*, No. 20, 1 May 2007, pp. 6-8; Dmitry Gorenburg, 'The Southern Kuril Islands Dispute', *PONARES Eurasia Policy Memo*, No. 226, September 2012, at <[http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pepm\\_226\\_Gorenburg\\_Sept2012.pdf](http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pepm_226_Gorenburg_Sept2012.pdf)> (accessed 29 June 2017).
- 11 See the website, 'Northern Territories', of the Ministry of Foreign Affairs of Japan, at <<http://www.mofa.go.jp/region/europe/russia/territory/overview.html>> (accessed 29 June 2017).
- 12 The relevant part is the following.  

'The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.'
- 13 The Yalta Agreement stipulates as follows:  

'2. The former rights of Russia violated by the treacherous attack of Japan in 1904 shall be restored'.
- 14 As is often pointed out, Japan should also consider a possibility to have a serious talk with the United States on the Northern Territories issue. See Gregory Clark, 'Northern Territories Dispute Highlights Flawed Diplomacy', *The Japan Times Online*, 24 March 2005, at <<http://www.japantimes.co.jp/opinion/2005/03/24/commentary/northern-territories-dispute-highlights-flawed-diplomacy/#.WWL5bIjyiUk>> (accessed 29 June 2017).
- 15 The relevant part is the following:  

'8. The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.'
- 16 The relevant part is the following:  

'Article 25

For the purposes of the present Treaty the Allied Powers shall be the States at war with Japan, or any State which previously formed a part of the territory of a State named in Article 23, provided that in each case the State concerned has signed and ratified the Treaty. Subject to the provisions of Article 21, the present Treaty shall not confer any rights, titles or benefits on any State which is not an Allied Power as herein defined; nor shall any right, title or interest of Japan be deemed to be diminished



- or prejudiced by any provision of the Treaty in favor of a State which is not an Allied Power as so defined.’
- 17 The relevant part is the following:  
‘Article 2  
(c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905.’
  - 18 See Shunichi Matsumoto, *Nisso Kokko Kaihuku Hiroku: Hoppo Ryodo Kosho no Shinjitsu* [A Secret Record on the Normalization of Japan-USSR Diplomatic Relations: The Truth of the Negotiation on the Northern Territories], Asahi Newspaper Publisher, 2012, pp. 124-127.
  - 19 Paragraph 9 of the 1956 Joint Declaration reads, as follows:  
‘9. Japan and the Union of Soviet Socialist Republics agree to continue, after the restoration of normal diplomatic relations between Japan and the Union of Soviet Socialist Republics, negotiations for the conclusion of a peace treaty.  
The Union of Soviet Socialist Republics, desiring to meet the wishes of Japan and taking into consideration the interests of Japan, agrees to hand over to Japan the Habomai Islands and the island of Shikotan. However, the actual handing over of these islands to Japan shall take place after the conclusion of a peace treaty between Japan and the Union of Soviet Socialist Republics.’
  - 20 ‘European Parliament resolution on relations between the EU, China and Taiwan and security in the Far East’, 7 July 2005, P6\_TA (2005) 0297, at <<http://www.europarl.europa.eu/sides/getDoc.do;jsessionid=DA13CD0EFCEC56113FF7B64421F6F62E.node1?pubRef=-//EP//TEXT+TA+P6-TA-2005-0297+0+DOC+XML+V0//EN>> (accessed 30 July 2017).
  - 21 See the website, ‘Japan-Russia Summit Meeting’, of the Ministry of Foreign Affairs of Japan, at <[http://www.mofa.go.jp/erp/rss/northern/page4e\\_000427.html](http://www.mofa.go.jp/erp/rss/northern/page4e_000427.html)> (accessed 29 June 2017).
  - 22 See, in general, Masahiko Asada, ‘Takeshima/Dok Do Islands from a Japanese Perspective’, *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e647?rskey=HwY8pM&result=1&prd=EPIL>> (accessed 29 June 2017); Seokwoo Lee, ‘Dok Do/Takeshima Islands from a Korean Perspective’, *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2123?rskey=HwY8pM&result=2&prd=EPIL>> (accessed 29 June 2017); Schoenbaum, (Ed.), *supra* n. 2, pp. 105-116; Min Gyo Koo, *Island Disputes and Maritime Regime Building in East Asia: Between a Rock and a Hard Place*, Springer, 2010; Seokwoo Lee & Hee Eun Lee, (Eds.), *Dokdo: Historical Appraisal and International Justice*, Martinus Nijhoff Publishers, 2011; Seokwoo Lee, ‘Korea and Japan: the Dokdo/Takeshima Problem’, in Hara, *supra* n. 3, pp. 20-36.
  - 23 The total size of the island (0.23km<sup>2</sup>) is almost the same as that of the ‘Jardin du Luxembourg’ (23 hectares).
  - 24 See Taisaku Ikeshima, ‘Fundamental Pitfalls of the South China Sea Arbitration Ruling’, *Waseda Global Forum*, No. 13, 2016, pp. 25-51, 40-42.
  - 25 See the website, ‘Establishment of “Syngman Rhee Line” and Illegal Occupation of Takeshima by the Republic of Korea’, of the Ministry of Foreign Affairs of Japan, at <[http://www.mofa.go.jp/a\\_o/na/takeshima/page1we\\_000064.html](http://www.mofa.go.jp/a_o/na/takeshima/page1we_000064.html)> (accessed 29 June 2017). At the time, the ROK had a military



- government.
- 26 See Taisaku Ikeshima, 'Applicability of the Law of the Sea in the Settlement of Territorial and Maritime Disputes in the East and South China Sea', *Waseda Global Forum*, No. 11, 2014, pp. 47-73.
- 27 See the website, Korea's Position on Dokdo', of the Ministry of Foreign Affairs of the Republic of Korea, at <[http://dokdo.mofa.go.kr/eng/dokdo/government\\_position.jsp](http://dokdo.mofa.go.kr/eng/dokdo/government_position.jsp)> (accessed 29 June 2017).
- 28 See the website, 'Takeshima', of the Ministry of Foreign Affairs of Japan, at <<http://www.mofa.go.jp/region/asia-paci/takeshima/position.html>> (accessed 29 June 2017).
- 29 See the website, 'Proposal of Referral to the International Court of Justice', of the Ministry of Foreign Affairs of Japan, at <[http://www.mofa.go.jp/a\\_o/na/takeshima/page1we\\_000065.html](http://www.mofa.go.jp/a_o/na/takeshima/page1we_000065.html)> (accessed 29 June 2017). And see also the statement by the then Foreign Minister, at <[http://www.mofa.go.jp/announce/announce/2012/8/0830\\_02.html](http://www.mofa.go.jp/announce/announce/2012/8/0830_02.html)> (accessed 29 June 2017).
- 30 See the protest lodged by the Japanese Foreign Minister, at <[http://www.mofa.go.jp/announce/fm\\_press/2012/8/0810\\_01.html](http://www.mofa.go.jp/announce/fm_press/2012/8/0810_01.html)> (accessed 29 June 2017).
- 31 See Masahiko Asada, 'Senkaku/Diaoyu Islands', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2015?rskey=mHIHCI&result=1&prd=EPIL>> (accessed 29 June 2017); Seoung-Yong Hong & Jon M. Van Dyke, (Eds.), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff Publishers, 2009; Unryu Suganuma, 'Japan and China: Senkaku/Diaoyu and the Okinawa/Liuqiu Problems', in Hara, *supra* n. 3, pp. 55-78; Ukeru Magosaki, (Ed.), *Kensho: Senkaku Mondai* [Verifying the Senkaku Issue], Iwanami Shoten, 2012; Takashi Okada, *Senkaku Shoto Mondai: Ryodo Nashonarizumu no Maryoku* [The Senkaku Islands Issues: The Magic of Territorial Nationalism], Sososha, 2012.
- 32 These are almost as twice as big as the forest of Vincennes in Paris (1.91km<sup>2</sup>).
- 33 Reportedly, Taiwan is the first party that made a claim to the islands after the report was issued. Then China followed this.
- 34 See Susumu Yabuki, *Senkaku Shototsu ha Okinawa Henkan ni Hajimaru: Nichi Bei Chu Sankaku Kankei no Choten toshiteno Senkaku* [The Clash of Senkaku Begins with the Return of Okinawa: The Senkaku as the Peak of the Japan-U.S.-China Trilateral Relationship], Kadensha, 2013.
- 35 Up until some years ago, a reference to the official website of the MOFA would have realized the reader only to find a provisional English translation of Japan's standpoint, titled 'The Basic View on the Sovereignty over the Senkaku Islands', without a map. However, the MOFA made a great change to the website, so that it will properly and openly express its position.
- 36 See the website, 'Senkaku Islands', of the Ministry of Foreign Affairs of Japan, at <<http://www.mofa.go.jp/region/asia-paci/senkaku/index.html>> (accessed 29 June 2017).
- 37 See the website, 'Diaoyu islands belong to China', of the Foreign Ministry of the People's Republic of China, at <[http://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/diaodao\\_665718/t981210.shtml](http://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/t981210.shtml)> (accessed 29 June 2017).
- 38 See the website, 'The Diaoyu Islands: The owner and the thief', of the Foreign Ministry of the People's Republic of China, at <[http://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/diaodao\\_665718/t981211.shtml](http://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/t981211.shtml)> (accessed 29 June 2017).
- 39 See Susumu Yabuki, *Senkaku Mondai no Kakushin: Nicchuu Kankei ha dou naru* [The Core of the Senkaku Issue: What will Happen to the Japan-China Relationship?], Kadensha, 2013.

- 40 See Ximena Hinrichs Oyarce, 'Argentina-Chile Frontier Cases', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e97?rskey=GSjGsl&result=2&prd=EPIL>> (accessed 29 June 2017); Loise Angélique de la Fayette, 'Beagle Channel Dispute', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1144?rskey=GSjGsl&result=1&prd=EPIL>> (accessed 29 June 2017).
- 41 See the website on the *Land and Maritime Boundary between Cameroon and Nigeria* Case of the ICJ at <<http://www.icj-cij.org/en/case/94>> (accessed 10 July 2017); Daniel-Erasmus Khan, 'Land and Maritime Boundary between Cameroon and Nigeria Case (Cameroon v Nigeria)', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e156?rskey=AieTed&result=1&prd=EPIL>> (accessed 29 June 2017).
- 42 See Akihiro Iwashita, *Chuu Ro Kokkyo 4000 Kiro* [4000 km of the Boundaries between China and Russia], Kadokawa Shoten, 2003; Akihiro Iwashita, *Kokkyo Dare ga kono Sen wo Hiita noka: Nihon to Yurashia* [Who Drew this Boundary Line?: Japan and Eurasia], Hokkaido University Press, 2006.
- 43 See Iwashita, 2006, *supra* n. 42, pp. 180-185.
- 44 See Christopher C. Joyner, *Antarctica and the Law of the Sea*, Martinus Nijhoff Publishers, 1992; Sir Arthur Watts, *International Law and the Antarctic Treaty System*, Grotius Publications Limited, 1992; Christopher C. Joyner, *Governing the Frozen Commons: The Antarctic Regime and Environmental Protection*, University of South Carolina Press, 1998; Taisaku Ikeshima, *Nankyoku Joyaku Taisei to Kokusaiho: Ryodo, Shigen, Kankyo wo Meguru Rigai no Chosei* [The Antarctic Treaty System and International Law: Accommodation of Interests in Territory, Resources and the Environment], Keio University Press, 2000.
- 45 See Geir Ulfstein, 'Spitsbergen/Svalbard', *Oxford Public International Law Max Planck Encyclopedia of Public International Law*, online at <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1356?rskey=cxNcRN&result=1&prd=EPIL>> (accessed 29 June 2017). See also the articles in Japanese written by Kentaro Nishimoto and Naoya Okuwaki, respectively, in Naoya Okuwaki & Hideaki Shiroyama, (Eds.), *Hokkyokukai no Gabanansu* [Governing the Arctic Ocean], Toshindo, 2013, pp. 143-192. In relation with this book, see Taisaku Ikeshima, 'Book Review on *Hokkyokukai no Gabanansu* [Governing the Arctic Ocean], Toshindo, 2013', *Japanese Yearbook of International Law*, Vol. 58 (2015), 2016, pp. 420-423.
- 46 See also the case of Åland Island in Hara & Jukes, *supra* n. 9, pp. 106-124.
- 47 See Georges Scelle, 'Obsession du Territoire', in *Symbolae Verzijl*, La Haye, Martinus Nijhoff, 1958, pp. 347-361.
- 48 See Ikeshima, 2016, *supra* n. 24.
- 49 See Ikeshima, 2014, *supra* n. 26, pp. 58-62.